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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No.1214 of 2003 (O&M)

Date of decision: 08.12.2022

Jagsir Singh

..... Appellant

versus

The State of Punjab and others

..... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. G. S. Sandhu, Advocate
for the appellant.

Mr. Gurpreet Singh, Addl. A.G., Punjab.

MANJARI NEHRU KAUL J. (Oral)

Suit for declaration filed by the plaintiff was dismissed by the trial court vide judgment and decree dated 02.03.2000 and even the appeal preferred by the plaintiff against the said judgment and decree was dismissed vide judgment dated 27.07.2002. The plaintiff is now before this court in Regular Second Appeal.

Parties to the lis, hereinafter shall be referred to by their original positions in the suit.

In brief, the pleaded case of the plaintiff may be noticed as thus: The plaintiff joined the Punjab Police as a Constable on 16.11.1989. The plaintiff was discharged from service by the Senior Superintendent of Police, Faridkot vide order dated 29.08.1992. The grievance of the plaintiff is that, under the garb of the order dated 29.08.1992, he had in fact been dismissed from service. The plaintiff alleged that the order dated 29.08.1992 had been passed as a measure of punishment on the allegations

that on 20.05.1992, the plaintiff along with some other police officials was extorting money from vehicle drivers and on being caught by an Army Officer, the plaintiff had apologized for the same. Thereafter, an inquiry was instituted and while the inquiry was still underway, the plaintiff was removed from service. Besides denying the allegations levelled against him with respect to extortion of money, the plaintiff pleaded that the said inquiry had not been conducted in accordance with the principles of natural justice as neither any show cause notice, nor copies of preliminary inquiry were served upon the plaintiff. It was further averred that the appeal filed by the plaintiff before the Deputy Inspector General of Police, Ferozepur against order dated 29.08.1992 was dismissed by way of a non speaking order. Still further, the Director General of Police, Punjab too dismissed the appeal. Hence, having been left with no other option, the plaintiff instituted the suit in question.

On being put to notice, the defendants in their written statement, controverted the averments of the plaintiff by submitting that plaintiff was discharged under Rule 12.21 of the Punjab Police Rules (hereinafter referred to as the Rules) on the basis of six monthly reports on form No.19.5(1), stating that the act and conduct of the plaintiff was not satisfactory and he was unlikely to become a good police officer. It was admitted that an inquiry was initiated against the plaintiff on the charge that on 20.05.1992 the plaintiff, along with some other constables, went to Gohana Bye Pass in an inebriated condition with his service rifle and five cartridges. On reaching there, they started checking vehicles illegally and extorted money from truck/tempo drivers. The said departmental inquiry

was conducted as per rules, and copies of all the relevant documents were supplied to the plaintiff. The inquiry officer had found him guilty during the departmental proceedings, however, before the Inquiry Officer could submit his report, the plaintiff was discharged from service under Rule 12.21 of the Rules on the basis of six monthly reports. It was averred that no inquiry was required under Rule 12.21 of the Rules, therefore, the order dated 29.08.1992 was legal, valid and not punitive.

Both the Courts below on the basis of material on record and other evidence led, dismissed the suit of the plaintiff by holding that the impugned order was a simple order of discharge under Section 12.21 of the Rules and therefore, was neither punitive in nature nor based on the allegations of misconduct. It was further held that there was no provision for an inquiry under the above-mentioned Rule.

Learned counsel for the appellant submits that both the Courts below failed to appreciate that the plaintiff was removed from service as a punishment measure under the garb of order of discharge under Rule 12.21 of the Rules, therefore, the order of discharge was stigmatic and punitive. He has further argued that the order of discharge was passed in undue haste without even awaiting the inquiry report or the completion of the inquiry, which would have proved the innocence of the plaintiff. Thus, learned counsel urged that the order of discharge was unfair and against the spirit of law.

Per contra, learned counsel appearing for the State vehemently opposed the submissions made by the counsel opposite and submitted that the order of discharge of the plaintiff could not be said to

be punitive or stigmatic because it was a simple order of discharge based on the six monthly report and still further, it had been passed within three years of the enrollment of the plaintiff with the Punjab Police, while the plaintiff was still under probation. He further argued that there was no requirement of an inquiry to be conducted under Rule 12.21 of the Rules and therefore, there was no requirement for the authorities concerned to await the inquiry report.

I have heard learned counsel for the parties and perused the relevant material on record.

Before proceeding further, it would be relevant to reproduce Rule 12.21 of the Rules, which is as follows:

“A constable who is found unlikely to prove an efficient police officer may be discharged by the Superintendent at any time within three years of enrollment. There shall be no appeal against an order of discharge under this rule.”

A perusal of the above reproduced Rule leaves no manner of doubt that an order of discharge may be made any time within three years of the enrollment of a constable. Still further, the above Rules do not mandate any inquiry in case a constable is discharged within three years of his enrolment. Therefore, it is evident that the order of discharge was passed as per the Rules, and the authorities in the circumstances were not required to wait for the culmination of the inquiry, which had been instituted against the plaintiff. It has not been disputed, rather, it is matter of record that the plaintiff was discharged within three years of his enrolment as a constable with the Punjab Police, i.e., while he was on

probation.

It needs to be observed here that the period of probation is an opportunity for the authorities concerned to ascertain the capability and suitability of an employee for continuation of his service. Accordingly, the afore-mentioned Rule has given a clear right to the department to dispense with the services of the employee within the probation period in case he is found unsuitable for the service. It was no doubt vehemently argued by learned counsel for the appellant-plaintiff that the impugned order was punitive and stigmatic in nature, however, this contention of learned counsel falls flat on its face, as a perusal of the record shows that the impugned order of discharge was not passed on the ground of alleged misconduct, but on the basis of the six monthly report submitted by the Line Officer. It is therefore, a simple order of discharge and has no stigma attached to it.

Upon being pointedly asked, learned counsel for the appellant-plaintiff failed to refer to anything on record to show that the conclusions arrived at by the Courts below were either contrary to the record or suffered from any material illegality.

As a sequel to the above, this Court is of the opinion that the impugned judgments dated 02.03.2000 and 27.07.2002 warrant no interference and consequently, the instant appeal stands dismissed.

08.12.2022

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**(MANJARI NEHRU KAUL)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No